IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 582 of 1995

HON'BLE MR.JUSTICE N.G.NANDI

and

HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UDESINH TERABHAI KOLI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 582 of 1995

MR KR RAVAL for Petitioner

MR AJ DESAI, APP, for Respondent

CORAM : HON'BLE MR.JUSTICE N.G.NANDI

and

HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 07/11/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.C.PATEL)

1. The appellant was the accused no.1 in Sessions Case No.126/94 before the learned Sessions Judge, Panchmahals, who, by his judgement and order dated 17.5.1995, convicted the appellant for the offence under sections 302 and 201 of IPC. The appellant was sentenced to life imprisonment and to pay a fine of Rs.1000/-, in default, to undergo further RI for six months for the offence under section 302 of IPC. No separate sentence was awarded for the offence under section 201 of IPC. The accused nos.2 and 3 were acquitted. There is no appeal against their acquittal.

2. The prosecution case briefly stated was as follows:

2.1 The appellant was employed as a peon in Kamal High School at Piplod. The deceased Vardhanben Hirabhai was his aunt. The appellant's father and his first wife and one of his buffaloes had died and the appellant suspected Vardhanben to be a witch and he blamed her for his misfortunes. He, therefore, hatched a plan to kill her. Vardhanben's son Bharat was studying in the same school. The appellant called Vardhanben to the school on 29.5.1995, which was a Sunday, on the pretext of making payment of Rs.500/- as Scholarship to Bharat. Vardhanben went to the school. The appellant took her to the drawing room on the second floor. He and the accused no.2 Laxmanbhai Manabhai beat her to death with a stick. The dead body was sewn up in a bag and a new lock was put on the room during the day. At night the appellant went back to the school with accused no.3 Babubhai Gopsing Patel and they took the dead body on a bicycle to village Asaiadi where foundation had been dug for the construction of a pipeline for GIDC. They buried the dead body in the foundation and covered it with earth and stones.

2.2 One Maganbhai was employed as watchman in the GIDC. His wife Kapuri informed Dhirabhai Gamabhai, her father (PW2), that there was a foul smell coming from the excavation which had been made for laying the pipeline and that a dead body was spotted there. Dhirabhai therefore went to the police station, Baria and his complaint was recorded by PSI Omprakash Sharma (PW12). PSI Sharma went to village Asiadi and found that there was a dead body of a woman lying there. Inquest was held and panchnama was prepared. He also wrote a Yadi to the Medical Officer, Devagadh Bariya. Dr. Kamalkumar Mishra

(PW1) was called to the spot for performing the postmortem. Dr. Mishra went there and carried out the postmortem between 5 and 6 pm on 1.6.1994. His evidence shows that the hair and nails had become loose, tongue was inside the mouth between the teeth, the whole face was disfigured, skin had peeled off, there was one flabby swelling present over left temporal region 1 1/2" in diameter. On internal examination it was found that there was reddish fluid present below the swelling and there was a linear fracture present over temporal bone. In his opinion, the cause of death was coma due to intra cranial hemorrhage following left temporal bone. Foul smell was coming from the whole body. He stated that the injury could have been caused by hard and blunt substance. In cross-examination he said that the dead body was beyond recognition. There was no skin on the face and it was crawling with insects. He stated that the death must have occurred 3-4 days before the time of postmortem examination. He said that the injury must have been caused 48-78 hours before the postmortem.

2.3 While PSI Sharma was making inquiries at the spot, one Bhemabhai, the brother of Vardhanben came there and identified the body as that of the Vardhanben. Bhemabhai has not been examined as a witness. Vardhanben's husband Hirabhai Gemabhai (PW3) and her son Bharatbhai Hirabhai (PW5) were called and they too identified the dead body. The statements of other witnesses were also recorded. The accused were thereafter arrested. According to the prosecution case, the appellant took the police and the Panchas to the drawing room of the school and he produced a key from his pocket and opened the lock. There was blood on the flooring. One tooth, a bloodstained note book and a rupee coin were recovered from the room. One cycle and a stick were also recovered from another room. The articles which were recovered were sent to Forensic Science Laboratory and after obtaining the report chargesheet was filed against the appellant and the other accused.

3. The charge was framed at Exh.4. It was alleged that the accused no.1 (present appellant) and the accused no.2 were employed as peons in the Piplod High School and accused no.1 is the brother-in-law of accused no.2. The accused no.1 had lost his mother, his first wife and a buffalo and he suspected that Vardhanben was a witch and she had killed them. Accused nos.1 and 2, therefore, hatched a plan to kill Vardhanben and accused nos.1 and 2 called her to Piplod High School on 29.5.1994 between 8 and 8.30 am on the pretext of paying Rs.500/- as the

amount of scholarship to her son Bharat. Vardhanben and her son Bharat came to the Piplod bazar. The accused no.1 took Vardhanben to Piplod High School and told Bharat to wait in the bazar. The accused nos.1 and 2 beat Vardhanben to death with a stick. Thereafter the dead body was sewn up in a bag and accused no.1 and accused no.3 took the dead body to village Asaidi where excavation of the foundation for the construction of GIDC was in progress and the dead body was thrown into the foundation and was covered with earth and stones.

4. In order to prove that Vardhanben was called to the school by accused no.1 on 29.5.1994 which was a Sunday, the prosecution has examined two witnesses i.e. Hirabhai and Bharatbhai, the son of Vardhanben. According to Hirabhai, Bharatbhai was his brother's son and he adopted him. Bharat was studying in Piplod High School. The appellant had told his wife on Friday that Bhatarbhai was to get a scholarship. However, the next day his wife had to go to village Lukhawada since her brother had died. The appellant, therefore, told his wife to come on Sunday to receive the amount of scholarship. His wife went to the school on Sunday. His son Bharat followed her. He also described all the ornaments and clothes she was wearing at that time. When Bharat came back, he asked him where his mother had gone. He said that she had gone to the school, but she had not come back. He, therefore, thought that she might have met someone from her father's family and she might have gone there. He, therefore, went to village Lukhawada and asked his brother whether Vardhanben had come there. But he said that she had not come there. They, therefore, came back to their village and they made inquiries in the neighborhood. But his wife was not traceable. However, the police came to fetch them when a dead body was found in the GIDC. They went there. On seeing the dead body he identified the dead body. He said that he did not know why the appellant had killed his wife.

5. In cross-examination he said that other women also wear the same type of ornaments as his wife was wearing. He said that Udesinh had come to his house, but he had not met him nor had he seen him. He did not know whether his son had applied for scholarship or not. He said that his son was in the 12th standard, but he had never received any scholarship. He denied the suggestion that he had got up the story of Udesinh having told his wife that the scholarship was to be paid after the dead body had been recovered.

6. According to Bharatbhai Hirabhai (PW5), at the

time of the incident he was a student in Piplod High School. Udesinh, the appellant had come to his house on 27.5.1994, which was a Friday. Her mother was taking bath. When she came out he told her to come to Piplod High School on Saturday to receive his scholarship. His mother said that there was after-death ceremony of his uncle on Saturday and she would not be able to come. Then the appellant told her to come on Sunday. On Sunday morning his mother left for Piplod. His father told him that his mother had gone to receive his scholarship and told him to go after her. He, therefore, followed her. He met his mother at village Panchela. From there they walked to Piplod bazar where Udesinh, the appellant, met them. The appellant asked him why he had come. He told him that since payment would not be made without his signature, he had come. Udesinh said that his presence was not required. He took his mother to the school and he waited at the bus stand. After some time he went to the school. There Udesinh alone was there. He said that the clerk was not available and therefore he had sent his mother back. He again went back to the bazaar, but his mother was not to be found. He went back to the school again, and again Udesinh told him that his mother was not there. He, therefore, went back to his village Pratappura. He asked his father whether his mother had come back. He replied that she had not come back. They waited till evening. Thereafter they made inquiries in village Pisoi and village Lukhawada. His father asked his uncle at village Lukhawada whether his sister had come there. But his uncle said that she had not come. They became worried. They went about making inquiries with their relatives. Thereafter his father went to village Kunadha to make inquiries. In the meantime police jeep came to his house and the police asked him where his mother had gone. He told them that he had gone with her to the bazar and thereafter she had gone to meet Udesinh. The police took him to the GIDC where the dead body was found. He identified the dead body by her hands and legs. He said that he did not know why his mother had been killed. In cross examination he said that Udesinh came to his house when he was at home. However, he had not heard the talk between his mother and Udesinh. He had not asked his mother why Udesinh came there and her mother did not say anything about it. He came to know about it when, on Sunday, his father told him about it. He denied the suggestion that he had never received any scholarship. He said that he had received scholarship of Rs.400/- till 11th standard. While receiving the payment his signature and his father's signature were taken. He knew that a woman's signature was not taken.

7. Ratansinh was a relative of Hirabhai. According to him Hirabhai and his son Bharat met him on 31.5.1995 on their way to village Lukhawada. Hirabhai told him that his wife had not returned and when he asked where she had gone, he replied that Udesinh had called her to the school for payment of scholarship. He then went to the house of Udesinh and met Udesinh's aunt there and asked her where Udesinh had gone. She replied that Udesinh had gone to the school and thereafter he was to go to village Dangariya. Thereafter Ratansinh sent his brother to the school. However, the peon Valabhai told him that Udesinh had not come to work and was on leave. Ratansinh again sent his daughter to Udesinh's place at about 5 O' clock in the evening and Udesinh came to his place at 6 O' clock. Udesinh told him that he had informed Vardhanben about the scholarship to be paid to Bharat in the evening on 27.5.1994, but she had said that she had to go elsewhere on the next day and therefore she would not be able to come. Therefore Udesinh told her to come on Sunday. Udesinh said that Vardhanben came to the school on Sunday, but since the clerk was not available the scholarship could not be paid and she had gone back. Ratansinh further stated that thereafter on 1.6.1994 at about 4 O' clock in the evening PSI Sharma came to his place, called Hirabhai and questioned him. Then they were taken in the police vehicle to village Asaiadi where the dead body was kept. He also identified the dead body.

8. The next material witness is Mukundlal Kantilal (PW7) who was the Principal in the High School. According to him the keys to the rooms of the school are kept with the Acharya and they remain with him. It was vacation at the time of the incident. However, they used to go to the school in the morning from 8 to 11 in the vacation. The appellant was a peon in the school, but was on leave till 6.6.1994. On 28.5.1994, which was a Saturday, he had gone to school. The appellant was on leave, but he had come to the school in connection with some work. On Saturday evening, after attending the school, he went to his residence at Godhra and after evening hours the keys were with the senior clerk Nirmalkumar Parikh. There was a lock on the drawing room in which the alleged incident occurred. After the incident there was a new lock instead of the old lock and they did not have the keys to the new lock. According to him, Bharatbhai had not filled in a form for scholarship and hence there was no question of paying any scholarship amount.

9. According to Valabhai (PW8) who was also a peon in the same school, he had handed over the keys to the senior clerk on 28.5.1994 at the instance of the Principal.

10. The prosecution case was that Vardhanben was done to death and her dead body was kept in the drawing room of the school and the accused nos.1 and 2 put it in a bag and took it on a bicycle to the place where it was buried. It was also the prosecution case that the appellant had asked for a bag from Veenaben Madhubhai (PW9) at about 10 O' clock on 29.5.1994 and she had told him that there may be a bag lying outside and the appellant had collected the same. However, Veenaben turned hostile and did not support the prosecution case. Thus, there is no evidence that the appellant had collected the bag from Veenaben.

11. It was also the prosecution case that the accused nos.1 and 2 went back to the school at about 4 O' clock on Sunday and asked Bhayakabhai (PW4), who was there as a watchman, for the key to the room where the bicycle was lying. The appellant took out the bicycle and then the accused nos.1 and 3 went upstairs and after some time they came down and the appellant went to the rear side where the cycle was parked and the accused no.3 sat with him. Thereafter the appellant went away on the bicycle saying that he was going to answer the call of nature and the accused no.3 remained with him. After about five minutes Udesinh came back with the bicycle and put it back where it was. Thereafter the accused nos.1 and 3 left on the bicycle and they came back after about an hour and a half. However, Bhayakabhai was declared hostile since he did not support the prosecution case. In cross-examination by the learned APP, he admitted having stated as above before the police. However, the counsel for the appellant rightly submitted that what is stated before the police cannot be treated as substantive evidence. Bhayakabhai has not said that what is stated before the police was the true version. In cross-examination on behalf of the accused he said that when he was questioned by the police he had said that he did not know anything and he did not know what the police had taken down as his statement. He specifically said that he was on leave on Sunday and that he had not gone to the school at night on Sunday and did not know what happened there.

12. It was also the prosecution case that the appellant led the police and the Panchas to the drawing room and the appellant took out a key from his pocket and

opened the lock and a bloodstained note book, a tooth and a coin were recovered from the room, which, according to FSL report, were found to have been stained with blood of the same group as that found on the sari which was recovered from the dead body. However, the panchas turned hostile and did not support the prosecution. Unfortunately PSI Sharma who was the investigating officer only said that the appellant had pointed out the scene of offence, and tooth, bloodstained paper, coin, bicycle, etc. were recovered but he did not say which was the place of the incident pointed out by the appellant nor did he say that the appellant had taken a key from his pocket and opened the lock on the drawing room. Thus, the alleged recovery of the articles is also not proved.

13. The result is that what the prosecution has been able to establish is that on 29.5.1994, which was a Sunday, Vardhanben went to Piplod, that she was followed by Bharatbhai and that Bharatbhai waited at the bus stop while Vardanban went to the school in the company of the appellant. Thereafter Vardhanben was not found and after three days her dead body was recovered at a place which was about 3 kms from the school. It is also in the evidence of Bharatbhai and Ratansinh that Udesinh had told them that since the clerk was not available Vardhanben had gone back. Though a specific motive was alleged in the charge, there is not an iota of evidence in support of the same. The appellant had told Vardhanben to come on 28th, which was a Saturday, and according to Mukundlal, the Acharya of the school, they used to go to the school in the morning. Thus, if the appellant had intended to kill Vardhanben, he would not have called her on a day when the Acharya would be in the school. It was Vardhanben who said that she would come on Sunday. No other incriminating circumstances has been established against the appellant. It has not been proved that the appellant had asked for a bag from Veenaben and that he had come to the school and carried the dead body on a cycle. It is also not proved that he had put the lock on the drawing room and that the lock was opened with a key produced by him. The only circumstance established against him is that Vardhanben had gone to the school in his company on Sunday. In our opinion, from this circumstance alone it cannot be inferred that it was the appellant who had killed Vardhanben. No other link in the chain of circumstance is established. It cannot be said that the circumstances which are established are consistent only with the guilt of the appellant and the hypothesis of innocence is ruled out. The learned Sessions Judge was, therefore, not

jutified in convicting the appellant of the offence under section 302 and 201 of IPC.

14. The result is that the appeal is allowed. The conviction of the appellant for the offence under section 302 and 201 of IPC recorded and the sentence imposed by the learned Sessions Judge, Panchmahals, in Sessions Case No.126/94 is quashed and set aside and the appellant is acquitted of the said offences. The appellant Udesinh Terabhai Koli Patel shall be set at liberty forthwith, if not required in any other case. Fine, if paid, shall be refunded.

[N.G. NANDI, J.]

[M.C. PATEL, J.]

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